

29 March 2018

Kevin Graulich
Senior Safety Engineer
Cal/OSHA- Research & Standards Occupational Health Unit
Department of Industrial Relations
1515 Clay Street
Oakland, CA 94612

RE: Draft Proposal for §3343 Workplace Violence Prevention in General Industry

Dear Mr. Graulich:

The Phylmar Regulatory Roundtable – OSH Forum (PRR) appreciates this opportunity to provide comments on DOSH's draft proposal for Workplace Violence in General Industry. PRR is a group of 35 companies and utilities; 15 of the members rank among the Fortune 500. Combined, the PRR members employ more than 687,600 individuals in the U.S. and have annual revenues of more than \$843 billion. PRR member companies are committed to improving workplace safety and health. Toward that end, PRR provides informal benchmarking and networking opportunities to share best practices for protecting employees. In addition, participating entities work together in the rulemaking process to develop recommendations to federal and state occupational safety and health agencies for effective workplace regulatory requirements.

PRR thanks the Division of Occupational Safety and Health (DOSH) for considering our recommendations submitted last year and for incorporating some of them into the draft proposal. PRR appreciates DOSH's hard work in this informal rulemaking, including the collaborative process with stakeholders through an advisory committee.

These comments were developed from PRR member experiences and expertise in developing and implementing workplace violence prevention programs. These programs have evolved over the years, and member guidance forms the basis of these comments. Nevertheless, the opinions expressed below are those of the PRR, and may differ from beliefs and comments of individual PRR members. PRR's long-held belief is that workplace violence hazards are among those hazards covered by Section 3203, Injury and Illness Prevention Program (IIPP) and should have been identified and addressed in an employer's IIPP if they are present in a workplace. However, some employers have not done so, and DOSH is proceeding with this rule at the request of the OSH Standards Board.

PRR believes that the draft is a good first step toward an effective regulation. We support the performance-oriented approach of the draft rule which is necessary given that the rule will cover nearly all employers in General Industry in diverse work environments. A specification approach would not be workable due to many variables, and the draft (with some needed

revisions) provides employers the flexibility to address hazards, while assuring that workers are protected from violence reasonably anticipated to occur at their workplaces. We share Cal/OSHA's goal of improving workplace safety and health, and offer these comments with the intention to achieve that goal without unnecessary disruption to current workplace security programs or to business operations.

Comments

I. §3343 (b) Definitions

A. Threat of Violence

Current Draft:

“Threat of violence” means a statement or conduct that causes a person to fear for his or her safety because there is a reasonable possibility the person might be physically injured, and that serves no legitimate purpose.

Concern: PRR understands DOSH's desire to make the definitions of terms in this draft rule consistent with those in the regulation for Workplace Violence Prevention in Health Care (Section [3342](#)). However, we request that DOSH reconsider the definition of “threat of violence” to provide additional clarity and to recognize language that has been used in the workplace security arena for some time. PRR members (and other employers in General Industry) established and implemented workplace security programs years ago, and many used the 2011 ANSI standard as either a basis for updating their programs, or as a model when formalizing their programs. Employers have been using the definition in the ANSI standard for “threat” which is different from the definition of “threat of violence” contained in the draft proposal. Employees have received training using the ANSI definition, and are familiar with it; making a change, which does not clarify an existing term, will require re-training for no benefit to worker safety or security.

PRR Proposal: The ANSI standard, ASIS/SHRM, [WVPI.1-2011](#) entitled “Workplace Violence Prevention and Intervention.” The definition of “threat” in that document is:

“Any verbal or physical conduct that conveys an intent or is reasonably perceived to convey an intent to cause physical harm or place someone in fear of physical harm.”

Rationale: A list of individuals who developed the ANSI Standard appears in the Introduction to the Standard. These individuals work full time in the Security and Human Resources professions, and they have had the most relevant experience in handling workplace violence incidents. In addition, one of the organizations responsible for developing the ANSI standard was [ASIS](#) International (formerly the American Society for Industrial Security, founded in 1955, which changed its name in 2002 to

become more global in nature), the “preeminent organization for security professionals with 37,000 members worldwide.” These professionals, after considerable debate, believed that the definition included in the Standard was the most appropriate for the purpose of workplace violence programs, and PRR recommends that DOSH accept the work previously done by these experts.

PRR members believe that the ANSI definition has more clarity than the language in the draft’s definition of “threat of violence,” which concludes with the phrase “and that serves no legitimate purpose.” It is possible that a threat could be contained in a statement or in conduct that also serves a legitimate purpose, such as a warning from an equipment operator “look out or I’ll take your head off.” It might not be desirable to potentially exclude the statement or conduct from meeting the identified criteria in some cases.

We believe the overall goal is to identify appropriate threats of violence, in order to respond in a prudent manner to protect employees. The current draft language could leave some behaviors to interpretation. The ANSI language identifies the key elements of conveying intent, or the reasonable perception of intent, to cause harm. The draft proposed language discusses “reasonable possibility” rather than the “reasonable perception” language in the ANSI standard. There is concern that the current draft language could be misinterpreted.

We understand there is some concern that employees, employers, and Cal/OSHA will not be able to interpret “intent” and therefore do not want to see this word in the definition. “Intent” is about delivery. Someone may say “I am going to kill you” and it could either mean something like “I don’t want you to do that” in a joking manner or “I will hurt you if you do it.” People may have overheard children or adults say it to one another; it is probably not likely to occur in that case. However, someone saying it while leaning in close with clenched fists or exhibiting some other behavior that could and should be perceived as threatening. That is an entirely different situation.

The U.S. Department of Labor, in its own Workplace Violence Prevention Program, [uses the concept of “intent” in its definition of “threat” as follows:](#)

Threat: Any oral or written expression or gesture that could be interpreted by a reasonable person as conveying an intent to cause physical harm to persons or property. Statements such as, “I’ll get him” or “She won’t get away with this” could be examples of threatening expressions depending on the facts and circumstances involved.

Also, security experts use definitions included in Penal Codes. For example, the California Penal Code Section [422](#) provides the legal definition of a “criminal threat” (formerly referred to as a “terrorist threat”); this section makes it a crime to threaten another person with immediate harm when you intend to, and in fact do, cause reasonable and sustained fear in that individual. The Penal Code states as follows:

In order to convict you of this offense, the prosecutor must prove the following four facts (otherwise known as "elements" of the offense):

1. that you willfully threatened to kill or seriously injure another person,
2. that you intended your verbal, written or electronically communicated statement to be received as a threat,
3. that the threat on its face and under the circumstances was so "unequivocal, unconditional, immediate and specific" that it conveyed an immediate possibility of execution, and
4. that the threatened individual reasonably feared for his/her safety or for the safety of his/her immediate family.

Note that you can violate California's criminal threats law without actually addressing the person you are threatening, according to California case of *People v. Lipsett* (2014). The defendant in this case got into a fight with another man over a dirt bike that the other man claimed the defendant was trying to steal. The defendant yelled to a companion, "Shoot him!" For this, the defendant was charged with violating Penal Code 422 PC, California's criminal threats law. All that mattered was that defendant intended his statement to be taken as a threat.

A detailed paper with definitions, cases, and analysis of "threat" in the criminal context may be found [here](#). Although we do not suggest that all workplace violence threats are criminal in nature, the case law on the topic may be of interest as background. One PRR member developed a [paper](#) for their own use which may be of interest.

As mentioned above, for employers who have already implemented workplace security programs, there is little benefit to requiring rewriting the plan, revising training programs, and re-training employees on a definition that provides less clarity than the ANSI standard that has been used since 2011.

B. Personally Identifiable Information (PII) Definition

Concern: The current draft does not contain a definition of personally identifiable information. Workplace violence injury investigations contain highly personal and sensitive information that should not be made available to other employees upon request. PRR recommends revisions to subsections (e)(3) and (e)(5) below to address these concerns.

PRR Proposed Language:

Personally identifiable information – Any information sufficient to allow identification of any person involved in a violent incident, such as the person's name, address, electronic mail address, telephone number, or social security

number, or other information that, alone or in combination with other publicly available information, reveals the person's identity.

Rationale: We recommend that DOSH include a definition for “personally identifiable” information that would be used in a revision to subsection (e)(3) to require that summaries of workplace injury investigations omit all personally identifiable information prior to release under subsection (e)(5). The language we propose is similar to that included in Section 3342.

PRR believes that all personally identifiable information should be omitted from records of workplace violence injury investigations prior to release to other employees. The current draft does not allow employers to omit such information when several provisions in the draft are taken together.

DOSH Proposed Language subsection (e)(3)

“Records of workplace violence injury investigations conducted pursuant to subsection (c)(10) shall be maintained for a minimum of five years. These records shall not contain “medical information” as defined by Civil Code Section 56.05(j).”

Civil Code Section 56.05(j) states:

“Medical information” means any individually identifiable information, in electronic or physical form, **in possession of or derived from a provider of health care, health care service plan**, pharmaceutical company, or contractor regarding a patient’s medical history, mental or physical condition, or treatment. “Individually identifiable” means that the medical information includes or contains any element of personal identifying information sufficient to allow identification of the individual, such as the patient’s name, address, electronic mail address, telephone number, or social security number, or other information that, alone or in combination with other publicly available information, reveals the individual’s identity. (Emphasis added.)

A related subsection, Provision (e)(5) states as follows:

“**All records** required by this subsection shall be made available to employees and their representatives, on request, for examination and copying in accordance with title 8, section 3204(e)(1) of these order.” (Emphasis added.)

Putting aside concerns about 3204 (to be addressed later), in combination, the above two provisions of subsection (e) require access to workplace violence injury investigations. PRR members are concerned about all employees being given access to all reports of investigations of workplace violence of either Type

3 (against an employee by a present or former employee, supervisor, or manager) OR Type 4 (committed in the workplace by someone who does not work there, but has or is known to have had a personal relationship with an employee). These records include highly sensitive personal information that may be detrimental to the reporting employee or information that may escalate an existing conflict.

PRR recognizes that the use of Civil Code Section 56.05(j) was used in the Workplace Violence Prevention in Health Care, Section 3342, and is the basis for its inclusion in the current draft for General Industry. However, as defined, “medical information” is information “in possession of or derived from a provider of health care, health care service plan, pharmaceutical company, or contractor regarding a patient’s medical history, mental or physical condition, or treatment.” This language makes sense in Section 3342 when the employer may typically be the provider of health care, but not for General Industry. PRR members, and most employers in General Industry, **will not qualify as a “provider of health care”** and would therefore not be entitled to omit personally identifiable information from records released.

Employers include highly sensitive information that is not necessarily “medical information” in workplace violence injury investigation reports. This information about the reporting employee, and often about other employees, is not currently released to other employees but held confidential. The current draft does not permit employers to summarize information or delete such information prior to release to other employees. PRR members believe that release of this information may result in exacerbating an already volatile situation.

PRR Recommended Language: We encourage DOSH to revise the language as follows to refer back to the definition:

(e)(3) The employer shall document workplace injury investigations conducted pursuant to subsection (c)(10) shall be maintained for a minimum of five years. These records shall not contain ~~“medical information” as defined by Civil Code Section 56.05(j)~~ any element of personal identifying information sufficient to allow identification of any person involved in a violent incident.

C. Workplace Violence

Current Draft:

“Workplace violence” means any act of violence or threat of violence that occurs at the work site. The term workplace violence shall not include lawful acts of self-defense or defense of others. Workplace violence includes the following:

(A) The threat or use of physical force against an employee that results in, or has a high likelihood of resulting in, injury, psychological trauma, or stress, regardless of whether the employee sustains an injury;

(B) An incident involving the threat or use of a firearm or other dangerous weapon, including the use of common objects as weapons, regardless of whether the employee sustains an injury;

(C) Four workplace violence types:

(1) "Type 1 violence" means workplace violence committed by a person who has no legitimate business at the work site, and includes violent acts by anyone who enters the workplace with the intent to commit a crime.

(2) "Type 2 violence" means workplace violence directed at employees by customers, clients, patients, students, inmates, or visitors.

(3) "Type 3 violence" means workplace violence against an employee by a present or former employee, supervisor, or manager.

(4) "Type 4 violence" means workplace violence committed in the workplace by someone who does not work there, but has or is known to have had a personal relationship with an employee.

Concern: PRR recognizes DOSH's intent to make the definitions of terms in the draft rule consistent with those in the regulation for Workplace Violence Prevention in Health Care (Section 3342). However, we believe that for clarity, DOSH re-consider the inclusion of "inmates" in the description of Type 2 violence.

PRR Proposal: For consistency and completeness, PRR recommends that "inmates" be deleted from the language describing Type 2 violence.

Rationale: Correctional facilities are excluded from the rule; therefore violence perpetrated by "inmate[s]" should not be included in the scope of the regulation.

II. §3343 (c) Workplace Violence Prevention Plan

Current Draft:

(c) Workplace Violence Prevention Plan. As part of the Injury and Illness Prevention Program (IIPP) required by title 8 section 3203, the employer shall establish, implement and maintain an effective workplace violence prevention plan (Plan). The Plan shall be in writing and shall be available to employees at all times. The written Plan may be incorporated into the written IIPP or maintained as a separate document, and shall include all of the following elements:

(1) Names or job titles of the persons responsible for implementing the Plan.

(2) Effective procedures to obtain the active involvement of employees and their representatives in developing and implementing the Plan, including their participation in identifying, evaluating, and correcting workplace violence hazards, designing and implementing training, and reporting and investigating workplace violence incidents.

(3) Methods the employer will use to coordinate implementation of the Plan with other employers whose employees work in same workplace, where applicable.

(4) Effective procedures for the employer to accept and respond to reports of workplace violence, including Type 3 violence, and to prohibit retaliation against an employee who makes such a report.

(5) Procedures to ensure that supervisory and non-supervisory employees comply with the Plan in accordance with title 8, section 3203(a)(2).

(6) Procedures to communicate with employees regarding workplace violence matters including:

(A) How an employee can report a violent incident, threat, or other workplace violence concern;

(B) How employees can communicate workplace violence concerns without fear of reprisal;

(C) How employee concerns will be investigated, and how employees will be informed of the results of the investigation and any corrective actions to be taken;

(7) Procedures to develop and provide the training required in subsection (d).

(8) Procedures to identify and evaluate workplace violence hazards, including scheduled periodic inspections to identify unsafe conditions and work practices and whenever the employer is made aware of a new or previously unrecognized hazard.

(9) Procedures to correct workplace violence hazards in a timely manner in accordance with title 8, section 3203(a)(6).

(10) Procedures for post-injury response and investigation.

Concern: PRR members support the elements of the draft regulation for a Plan to protect employees from workplace violence. The first sentence, however, leaves some ambiguity about whether the IIPP may be kept separately.

PRR Proposal: PRR recommends that DOSH revise the first sentence of subsection (c) to clarify that employers may have a separate stand-alone Workplace Violence Prevention plan or may include the Workplace Violence Prevention Plan as part of the IIPP, so the language would read:

Workplace Violence Prevention Plan. ~~As part of the Injury and Illness Prevention Program (IIPP) required by title 8 section 3203;~~ The employer shall

establish, implement and maintain an effective workplace violence prevention plan (Plan), either as part of the written IIPP required under Section 3203, or maintained as a separate document. The Plan shall be in writing and shall be available to employees at all times. ~~The written Plan may be incorporated into the written IIPP or maintained as a separate document,~~ and shall include all of the following elements:

Rationale: We support the draft language in the third sentence stating that an employer may have a separate Workplace Violence Prevention Program or maintain it as part of the IIPP. Unlike most of the written plans required by Cal/OSHA, the workplace safety and health function in many companies does not “own” the Workplace Violence Prevention Program, but rather it is managed by Security, Human Resources, Personnel Relations, legal, Asset Protection, or Loss Control. Safety and health staff participate in the development and implementation of the program, but are not responsible for it. To require that it be part of the IIPP will complicate matters in companies with existing programs, with no benefit to worker safety. We recommend that Cal/OSHA make it clear in the first sentence that employers have the option to establish and maintain the program either as part of the IIPP or a stand-alone program.

III. **(d) Training** - PRR member companies support the language requiring employers to provide training to employees addressing workplace violence risks that employees are reasonably anticipated to encounter in their jobs.

IV. **§3343 (e) Recordkeeping**

Current Draft:

- (1) Records of workplace violence hazard identification, evaluation, and correction shall be created and maintained in accordance with title section 3203(b)(1), except that the exception to title 8 section 3203(b)(1) does not apply.*
- (2) Training records shall be created and maintained for a minimum of one year and include training dates, contents or a summary of the training sessions, names and qualifications of persons conducting the training, and names and job titles of all persons attending the training sessions. Title 8, section 3203(b)(2) EXCEPTION NO. 1 does not apply to these training records.*
- (3) Records of workplace violence injury investigations conducted pursuant to subsection (c)(10) shall be maintained for a minimum of five years. These records shall not contain “medical information” as defined by Civil Code Section 56.05(j).*
- (4) All records required by this subsection shall be made available to the Chief on request, for examination and copying.*
- (5) All records required by this subsection shall be made available to employees and their representatives, on request, for examination and copying in accordance with title 8, section 3204(e)(1) of these orders.*

No comment on (e)(1), (e)(2), or (e)(4).

A. Subsection (e)(3) Concern: PRR members report that workplace violence injury investigations often include highly sensitive and confidential information. In all cases, employers work to protect the reporting employee. For example, investigator notes, recommended personnel actions, and summary of employee interviews (one member reported that from eight to fifteen employees are often interviewed following Type 3, or worker/former worker and worker) workplace violence injuries. In order not to make worse an already charged situation, employers do not permit employee or representative access to these notes, recommendations, and other materials. Records may include corrective measures such as personnel actions, which are always confidential. Also, injuries arising from Type 4 violence (non-employee with relationship to employee) contain personal and sensitive information that could be detrimental to the reporting employee and should not be provided to any other employee. One PRR member prepares a Draft Summary Determination of Findings and schedules a closing conference with the affected employee prior to finalizing the Determination of Findings which includes results of the investigation. Then, a sanitized version is provided if changes to the workplace violence prevention program are deemed necessary or if there are lessons learned to be distributed to other company locations.

In our comments on the definitions in subsection (b) above, we recommended that DOSH add a definition for “personally identifiable information” to address these privacy concerns. The definition would clarify what is meant in the second sentence of (e)(3). The reasons for deleting the reference to Civil Code Section 56.05(j) are: (1) “medical information” is too narrow and does not encompass the types of information that must be omitted from records released to other employees; and (2) employers in general industry are typically not the provider of health care, and are therefore not permitted to omit any information from records being released. We believe this could cause harm to employees.

PRR Proposal: We recommend that DOSH revise this subsection as follows:

(e)(3) ~~Records of~~ Summaries, of workplace violence injury investigations, including any revisions needed to the workplace violence program, conducted pursuant to subsection (c)(10) shall be maintained for a minimum of five years. These records shall not contain ~~“medical information” as defined by Civil Code Section 56.05(j)~~ any element of personal identifying information sufficient to allow identification of any person involved in a violent incident.

Rationale: PRR believes that to protect the reporting employee and maintain confidentiality of personnel decisions, **all personally identifiable information should be omitted** from records released. Further, PRR recommends that the investigations themselves be summarized to include general details and potential revisions to the workplace violence prevention program prior to release to other employees.

B. Reference to Section 3204, Access to Employee Medical and Exposure Records -
Subsection (e)(5) states as follows:

“All records required by this subsection shall be made available to employees and their representatives, on request, for examination and copying in accordance with title 8, section 3204(e)(1) of these orders.”

Concern: Section 3204 requires employee access to their **own** medical and exposure records. Section 3204 carefully defines what is and what is not a medical record and an exposure record. A number of safeguards are provided in Section 3204 to protect employers from release of information. These definitions are not included in subsection 3204(e)(1).

Further, we believe that the majority of General Industry employers do not have medical or exposure records on employees and will be confused by the inclusion of Section 3204 in this regulation. Section 3204 also requires that employers must keep the records for the length of employment plus 30 years, and PRR members see no benefit to this retention period here. It will impose significant administrative costs.

Further, the workplace violence injury investigation reports will include employee interviews that contain information about other employees, who have privacy rights as well. We understand that the intention is to assure that employees are able to secure a copy of the summary of an incident free of charge and within a reasonable time. We recommend that DOSH include language requiring this, rather than referring to Section 3204.

PRR is also concerned that this provision will give license to some entities for “fishing expeditions” in contemplation of a lawsuit under the Private Attorneys General Act ([PAGA](#)) which permits employees to sue employers for violations of Title 8.

PRR Proposal: PRR recommends that only summaries of workplace violence injury investigations and needed changes to the workplace violence prevention plan be made available.

(e)(5) All records required by this subsection shall be made available within 15 days of the request to the employees and their authorized representatives, on request, for examination and copying at no cost to the employee. in accordance with title 8, section 3204(e)(1) of these orders.

Rationale: We urge Cal/OSHA not to place employers in a situation where they have to choose between violating the requirement for release of all records or becoming involved in domestic matters or private tort actions (e.g., wife seeking records about husband/employee for lawsuit). A summary would provide all the relevant information of the incident and the investigation, without revealing confidential information.

Costs: Finally, DOSH has requested cost data. This data has traditionally been very difficult to quantify, and most companies are reluctant to identify expected costs when they do not yet know the language of the final rule or what changes they need to make to their workplace programs. However, recognizing that the Agency is seeking the information, we are providing the following **exceedingly rough** estimates. There are four elements to the draft proposed new requirements: the assessment, the development and implementation of the workplace violence

prevention program, development and roll out of the new training requirements, and identifying, approving, and completing controls where necessary. Obviously, the cost to employers will vary widely depending upon the type of industry, number of employees, the nature of operations, and other factors.

- a. Assessment/Gap Analysis:** Safety or security professionals will review the final regulation, and compare it to the organization's current workplace violence prevention program. The number of individuals and organizational units involved depends upon the structure, size and complexity of operations. As stated above, safety does not "own" the workplace security program within most companies, although the function has a role in its development and implementation. Depending on the organization, Security, Legal, Human Resources, Personnel Relations, Asset Protection, or Loss Control may have ultimate responsibility for workplace security.

Because the current draft of the Section 3343 is performance-oriented in nature, this part of the process should not take too long. However, because of the number of different organizational units involved, and the need to get input from various stakeholders, it will be time-consuming to coordinate this step for larger entities. For example, one company has seven different organizational units involved in workplace security, at \$150 per hour fully loaded for professional staff time for about 20 hours of work. This cost of up to \$3000 is not a significant cost for these larger companies. For smaller companies with no existing program, assessment of workplace violence hazard could take from ten minutes to twenty hours, depending upon the complexity of operations.

- b. Development and Implementation of the Workplace Violence Prevention Program:** For companies with existing programs, if revisions are needed to the program, drafting the language, undertaking review by all internal stakeholders and gaining ultimate approval could take up to about 20 hours (for each internal stakeholder). As mentioned above, there is often a relatively large group of individuals and business units who will need to weigh in (as compared to the average "safety" program).

For companies without existing programs, we hope that Cal/OSHA will have developed a template (similar to the Injury and Illness Prevention Program [Model](#) Program for Workplace Security) for employers to complete. This could take as little as an hour for a small employer. For larger employers, depending upon the complexity of operations, and the number of business units and internal stakeholders involved, it could take from 30-50 hours to write the program, and run it through all levels of review and approval.

- c. Training:** These costs are divided into three categories assessment, development of training, and training delivery. Again, costs will depend upon whether or not the entity has a Workplace Violence Prevention Program, the nature of current training, and the extent of the revisions to the training necessary once the regulation is final. The assessment of whether the current training program meets the requirements of the

regulation and any revisions to it will be step one, taking from 1-20 hours of professional time, depending upon the complexity of operations.

The second step is development of the training program. One company's experience is that it typically takes 300-400 hours of professional time to develop a training program at a fully loaded cost of about \$150 per hour. This is needed because of the number of different organizational units which must weigh in on the training to assure that all types of workplace violence hazards to which workers may be exposed in different operations are covered.

Once the training program is developed, the rollout of the training program occurs. One member company has 80,000 employees in California, at multiple locations. A conservative estimate of \$100 per hour salary (fully loaded) for a two hour training for these employees will total \$16 million for one company for training alone. A smaller PRR member company, with 1500 employees, estimates a fully loaded salary of about \$90 per hour, so their training costs for a two-hour training would be about \$270,000. Other members identify employee training costs at a range of \$65 - \$100 per hour, fully loaded.

Another company noted that another cost to be considered is the lost productivity of the employees while they are in training. For example, at a utility where power needs to be restored, work needs to be performed immediately, in some cases necessitating a hiring hall to assure that the work gets done.

According to the most recent [data](#) we could find from the U.S. Small Business Administration (SBA), employers in California with more than 500 employees (falling within SBA's definition of a "large employer") represent 50% of industry employment in the state (we did not see a specific number of large employers in the SBA report). The SBA identified 696,239 smaller firms employing 1-499 employees, with over three million "total small firms." For the 696,000 small employers (1-499 employees) that SBA estimates exist in California, one hour of training for an employer (at an average of \$50.00, loaded), would be \$69,600,000 just for the training piece (if they had only one employee).

We expect that DOSH will have better access to the data on the number of employees in the state to better refine these costs.

- d. Control Measures** – Costs of administrative and engineering controls will vary widely, depending upon the type of control measure needed (level of technology), the cost, how long is the process for capital expenditure approvals, and other factors. For example, although the "high heat" provisions of Section 3395 require communication systems for remote or lone workers, a similar control measure for workplace violence will increase the employee population that will be covered by the communication system, resulting in higher costs.

- e. **Cost Scenario** – One PRR member with 2000 employees with an existing workplace violence prevention program provided the following “quick math” breakdown of costs:

Training - The estimate is that the organization currently spends about \$96K/year on WVP training. All new hires receive Workplace Violence Prevention training; it is presented four times per year. There are typically about 25 people in each session for about an hour. 100 people/year at a (conservatively estimated) burdened rate of \$125/hour = \$12,500.

If the new regulation requires revision to the existing program, in addition to new hires, all existing employees would need to be trained for one hour each; $1900 \times \$125/\text{hour} = \$237,500$ initial training cost. If the regulation requires that each new hire be trained prior to assignment, the costs will be higher because the training will need to be provided more frequently.

The organization retrain every three years – 2000 employees, one-third of the employees are trained each year = $667/\text{year} @ \$125/\text{hour} = \$83,500$. Although the current draft regulation contains no requirement for retraining, some employers have refresher training to assure that employees understand how to protect themselves and to assure the employer that its training is “effective.” Therefore, retraining will be conducted.

2. Written Program – Their program is already written, but some time is spent each year (maybe 20 hours total spread out across a few people) reviewing it for any updates/correction/additions. Estimate is \$3,000 to conduct annual review. For companies with existing WVP programs, a review to identify any requirements not already included in their program, to create provisions, and finalize implementation of changes would be needed.

[For companies developing a program initially, the cost would be much higher, requiring at least 30 hours of time for all involved disciplines to develop a program. The cost per hour would vary widely, depending upon the employer size, industry and complexity of operations.]

Part of having an “effective program” for this member is to call together its Workplace Violence Prevention Team (usually six people) three times a year to review cases. These meetings are typically a couple hours with a couple more hours per person doing homework. They estimate six people, three meetings, four hours per meeting at about \$175 burdened rate (rate is higher, reflecting the more senior level individuals who are part of the team) = \$12,600.

3. Investigation – Security investigates probably at least two cases per month. They estimate about 32 hours per month, 384 hours a year on workplace violence prevention cases = \$48,000 a year.

Conclusion

PRR believes that the draft is a good first step toward an effective regulation, and we support its performance-oriented approach. We believe that acceptance of these comments will improve the effectiveness of the Workplace Violence Prevention Plan requirements and will protect employees from violence reasonably anticipated to occur at their workplaces.

Thank you for the opportunity to provide these comments on this important proposal. PRR would be pleased to discuss any of these comments further with DOSH staff. We look forward to continuing to work with Cal/OSHA and stakeholders on this important regulation.

Sincerely,

Elizabeth Treanor
Director
Phylmar Regulatory Roundtable-OSH Forum

PRR Sacramento Office
P. O. Box 660912, Sacramento, California 95866
+1.916.486.4415 | www.phylmar.com